

111TH CONGRESS  
1ST SESSION

# H. R. 3468

To amend the Internal Revenue Code of 1986, the Public Health Service Act, and the Employee Retirement Income Security Act of 1974 to promote the use of prevention and wellness programs.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. CASTLE (for himself, Mr. GERLACH, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend the Internal Revenue Code of 1986, the Public Health Service Act, and the Employee Retirement Income Security Act of 1974 to promote the use of prevention and wellness programs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting Health and  
5 Preventing Chronic Disease through Prevention and

1 Wellness Programs for Employees, Communities, and In-  
2 dividuals Act of 2009”.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Keeping people healthy and preventing dis-  
6 ease must be an important part of improving our  
7 federal health system.

8 (2) More than 133 million Americans, which ac-  
9 counts for 45 percent of the U.S. population, have  
10 at least one chronic condition.

11 (3) With the growth in obesity, especially  
12 among younger Americans, the diagnosis of child-  
13 hood chronic diseases has almost quadrupled over  
14 the past four decades and is expected to continue to  
15 rise.

16 (4) Chronic diseases are the leading causes of  
17 preventable death and disability in the United  
18 States, accounting for 7 out of every 10 deaths and  
19 killing more than 1,700,000 people in the United  
20 States every year.

21 (5) Two-thirds of the increase in health care  
22 spending is due to increased prevalence of treated  
23 chronic disease.

24 (6) Seventy-five percent of the nation’s aggre-  
25 gate health care spending is on treating patients

1 with chronic disease, and the vast majority of these  
2 diseases are preventable. Unfortunately, less than  
3 one percent of total health care spending goes to-  
4 ward prevention.

5 (7) According to a recent study, treatment of  
6 the seven most common chronic diseases, coupled  
7 with productivity losses, cost the U.S. economy more  
8 than \$1 trillion dollars annually. It has been esti-  
9 mated that modest reductions in unhealthy behaviors  
10 could prevent or delay 40 million cases of chronic ill-  
11 ness per year.

12 (8) Chronic diseases are burdensome to Amer-  
13 ican businesses. Not only does a sicker American  
14 workforce have higher health care costs, but it is  
15 also less productive. Chronic illnesses lead to absen-  
16 teeism and decreased effectiveness while at work due  
17 to illness.

18 (9) Prevention not only saves lives, it is highly  
19 cost-effective. One study concluded that an invest-  
20 ment of \$10 per person per year in proven commu-  
21 nity-based programs to increase physical activity,  
22 improve nutrition, and prevent smoking and other  
23 tobacco use could save the country more than \$16  
24 billion annually within five years. This is a return of  
25 \$5.60 for every \$1 spent.

1 **SEC. 3. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLE-**  
2 **MENTING PREVENTION AND WELLNESS PRO-**  
3 **GRAMS.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-  
5 chapter A of chapter 1 of the Internal Revenue Code of  
6 1986 (relating to business related credits) is amended by  
7 adding at the end the following:

8 **“SEC. 45R. PREVENTION AND WELLNESS PROGRAM CRED-**  
9 **IT.**

10 “(a) ALLOWANCE OF CREDIT.—

11 “(1) IN GENERAL.—For purposes of section 38,  
12 the prevention and wellness credit determined under  
13 this section for any taxable year during the credit  
14 period with respect to an employer is an amount  
15 equal to 50 percent of the costs paid or incurred by  
16 the employer in connection with a qualified preven-  
17 tion and wellness during the taxable year. For pur-  
18 poses of the preceding sentence, in the case of any  
19 qualified prevention and wellness offered as part of  
20 an employer-provided group health plan, including  
21 health insurance offered in connection with such  
22 plan, only costs attributable to the qualified preven-  
23 tion and wellness and not to the group health plan  
24 or health insurance coverage may be taken into ac-  
25 count.

1           “(2) LIMITATION.—The amount of credit al-  
2           lowed under paragraph (1) for any taxable year shall  
3           not exceed the sum of—

4                   “(A) the product of \$200 and the number  
5                   of employees of the employer not in excess of  
6                   200 employees, plus

7                   “(B) the product of \$100 and the number  
8                   of employees of the employer in excess of 200  
9                   employees.

10          “(b) QUALIFIED PREVENTION AND WELLNESS.—For  
11         purposes of this section—

12                   “(1)        QUALIFIED        PREVENTION        AND  
13         WELLNESS.—The term ‘qualified prevention and  
14         wellness’ means a program which—

15                   “(A) consists of any 3 of the prevention  
16                   and wellness components described in sub-  
17                   section (c), and

18                   “(B) which is certified by the Secretary of  
19                   Health and Human Services, in coordination  
20                   with the Director of the Center for Disease  
21                   Control and Prevention, as a qualified preven-  
22                   tion and wellness under this section.

23                   “(2) PROGRAMS MUST BE CONSISTENT WITH  
24         RESEARCH AND BEST PRACTICES.—

1           “(A) IN GENERAL.—The Secretary of  
2           Health and Human Services shall not certify a  
3           program as a qualified prevention and wellness  
4           unless the program—

5                   “(i) is consistent with evidence-based  
6                   research and best practices, as identified  
7                   by persons with expertise in employer  
8                   health promotion and prevention and  
9                   wellnesss,

10                   “(ii) includes multiple, evidence-based  
11                   strategies which are based on the existing  
12                   and emerging research and careful sci-  
13                   entific reviews, including the Guide to  
14                   Community Preventive Services, the Guide  
15                   to Clinical Preventive Services, and the  
16                   National Registry for Effective Programs,  
17                   and

18                   “(iii) includes strategies which focus  
19                   on employee populations with a dispropor-  
20                   tionate burden of health problems.

21           “(B) PERIODIC UPDATING AND REVIEW.—  
22           The Secretary of Health and Human Services  
23           shall establish procedures for periodic review of  
24           programs under this subsection. Such proce-  
25           dures shall require revisions of programs if nec-

1           essary to ensure compliance with the require-  
2           ments of this section and require updating of  
3           the programs to the extent the Secretary, in co-  
4           ordination with the Director of the Centers for  
5           Disease Control and Prevention, determines  
6           necessary to reflect new scientific findings.

7           “(3) HEALTH LITERACY.—The Secretary of  
8           Health and Human Services shall, as part of the  
9           certification process, encourage employees to make  
10          the programs culturally competent and to meet the  
11          health literacy needs of the employees covered by the  
12          programs.

13          “(c) PREVENTION AND WELLNESS PROGRAM COM-  
14          PONENTS.—For purposes of this section, the prevention  
15          and wellness components described in this subsection are  
16          the following:

17                 “(1) HEALTH AWARENESS COMPONENT.—A  
18                 health awareness component which provides for the  
19                 following:

20                         “(A) HEALTH EDUCATION.—The dissemi-  
21                         nation of health information which addresses  
22                         the specific needs and health risks of employees.

23                         “(B) HEALTH SCREENINGS.—The oppor-  
24                         tunity for periodic screenings for health prob-

1           lems and referrals for appropriate follow up  
2           measures.

3           “(2) EMPLOYEE ENGAGEMENT COMPONENT.—

4           An employee engagement component which provides  
5           for—

6                   “(A) the establishment of a committee to  
7                   actively engage employees in worksite preven-  
8                   tion and wellnesss through worksite assess-  
9                   ments and program planning, delivery, evalua-  
10                  tion, and improvement efforts, and

11                  “(B) the tracking of employee participa-  
12                  tion.

13           “(3) BEHAVIORAL CHANGE COMPONENT.—A  
14           behavioral change component which provides for al-  
15           tering employee lifestyles to encourage healthy living  
16           through counseling, seminars, on-line programs, or  
17           self-help materials which provide technical assistance  
18           and problem solving skills. Such component may in-  
19           clude programs relating to—

20                   “(A) tobacco use,

21                   “(B) obesity,

22                   “(C) stress management,

23                   “(D) physical fitness,

24                   “(E) nutrition,

25                   “(F) substance abuse,



1 “(G) depression, and

2 “(H) mental health promotion (including  
3 anxiety).

4 “(4) SUPPORTIVE ENVIRONMENT COMPO-  
5 NENT.—A supportive environment component which  
6 includes the following:

7 “(A) ON-SITE POLICIES.—Policies and  
8 services at the worksite which promote a  
9 healthy lifestyle, including policies relating to—

10 “(i) tobacco use at the worksite,

11 “(ii) the nutrition of food available at  
12 the worksite through cafeterias and vend-  
13 ing options,

14 “(iii) minimizing stress and promoting  
15 positive mental health in the workplace,

16 “(iv) where applicable, accessible and  
17 attractive stairs, and

18 “(v) the encouragement of physical  
19 activity before, during, and after work  
20 hours.

21 “(B) PARTICIPATION INCENTIVES.—

22 “(i) IN GENERAL.—Qualified incentive  
23 benefits for each employee who participates  
24 in the health screenings described in para-

graph (1)(B) or the behavioral change programs described in paragraph (3).

“(ii) QUALIFIED INCENTIVE BENEFIT.—For purposes of clause (i), the term ‘qualified incentive benefit’ means any benefit which is approved by the Secretary of Health and Human Services, in coordination with the Director of the Centers for Disease Control and Prevention.

“(C) EMPLOYEE INPUT.—The opportunity for employees to participate in the management of any qualified prevention and wellness to which this section applies.

“(d) PARTICIPATION REQUIREMENT.—

“(1) IN GENERAL.—No credit shall be allowed under subsection (a) unless the Secretary of Health and Human Services, in coordination with the Director of the Centers for Disease Control and Prevention, certifies, as a part of any certification described in subsection (b), that each prevention and wellness component of the qualified prevention and wellness applies to all qualified employees of the employer. The Secretary of Health and Human Services shall prescribe rules under which an employer shall not be treated as failing to meet the requirements of this

1 subsection merely because the employer provides  
2 specialized programs for employees with specific  
3 health needs or unusual employment requirements or  
4 provides a pilot program to test new wellness strate-  
5 gies.

6 “(2) QUALIFIED EMPLOYEE.—For purposes of  
7 paragraph (1), the term ‘qualified employee’  
8 means—

9 “(A) for employers offering health insur-  
10 ance coverage, an employee who is eligible for  
11 such coverage, or

12 “(B) for employers not offering health in-  
13 surance coverage, an employee who works an  
14 average of not less than 25 hours per week dur-  
15 ing the taxable year.

16 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—  
17 For purposes of this section—

18 “(1) EMPLOYEE AND EMPLOYER.—

19 “(A) PARTNERS AND PARTNERSHIPS.—  
20 The term ‘employee’ includes a partner and the  
21 term ‘employer’ includes a partnership.

22 “(B) CERTAIN RULES TO APPLY.—Rules  
23 similar to the rules of section 52 shall apply.

24 “(2) CERTAIN COSTS NOT INCLUDED.—Costs  
25 paid or incurred by an employer for food or health

1 insurance shall not be taken into account under sub-  
2 section (a).

3 “(3) NO CREDIT WHERE GRANT AWARDED.—

4 No credit shall be allowable under subsection (a)  
5 with respect to any qualified prevention and wellness  
6 of any taxpayer (other than an eligible employer de-  
7 scribed in subsection (f)(2)(A)) who receives a grant  
8 provided by the United States, a State, or a political  
9 subdivision of a State for use in connection with  
10 such program. The Secretary shall prescribe rules  
11 providing for the waiver of this paragraph with re-  
12 spect to any grant which does not constitute a sig-  
13 nificant portion of the funding for the qualified pre-  
14 vention and wellness.

15 “(4) CREDIT PERIOD.—

16 “(A) IN GENERAL.—The term ‘credit pe-  
17 riod’ means the period of 10 consecutive taxable  
18 years beginning with the taxable year in which  
19 the qualified prevention and wellness is first  
20 certified under this section.

21 “(B) SPECIAL RULE FOR EXISTING PRO-  
22 GRAMS.—In the case of an employer (or prede-  
23 cessor) which operates a prevention and  
24 wellness for its employees on the date of the en-  
25 actment of this section, subparagraph (A) shall

1 be applied by substituting ‘3 consecutive taxable  
2 years’ for ‘10 consecutive taxable years’. The  
3 Secretary shall prescribe rules under which this  
4 subsection shall not apply if an employer is re-  
5 quired to make substantial modifications in the  
6 existing prevention and wellness in order to  
7 qualify such program for certification as a  
8 qualified prevention and wellness.

9 “(C) CONTROLLED GROUPS.—For pur-  
10 poses of this paragraph, all persons treated as  
11 a single employer under subsection (b), (c),  
12 (m), or (o) of section 414 shall be treated as a  
13 single employer.

14 “(f) PORTION OF CREDIT MADE REFUNDABLE.—

15 “(1) IN GENERAL.—In the case of an eligible  
16 employer of an employee, the aggregate credits al-  
17 lowed to a taxpayer under subpart C shall be in-  
18 creased by the lesser of—

19 “(A) the credit which would be allowed  
20 under this section without regard to this sub-  
21 section and the limitation under section 38(c),  
22 or

23 “(B) the amount by which the aggregate  
24 amount of credits allowed by this subpart (de-  
25 termined without regard to this subsection)

1           would increase if the limitation imposed by sec-  
2           tion 38(c) for any taxable year were increased  
3           by the amount of employer payroll taxes im-  
4           posed on the taxpayer during the calendar year  
5           in which the taxable year begins.

6           The amount of the credit allowed under this sub-  
7           section shall not be treated as a credit allowed under  
8           this subpart and shall reduce the amount of the  
9           credit otherwise allowable under subsection (a) with-  
10          out regard to section 38(c).

11           “(2) ELIGIBLE EMPLOYER.—For purposes of  
12          this subsection, the term ‘eligible employer’ means  
13          an employer which is—

14                   “(A) a State or political subdivision there-  
15                   of, the District of Columbia, a possession of the  
16                   United States, or an agency or instrumentality  
17                   of any of the foregoing, or

18                   “(B) any organization described in section  
19                   501(c) of the Internal Revenue Code of 1986  
20                   which is exempt from taxation under section  
21                   501(a) of such Code.

22           “(3) EMPLOYER PAYROLL TAXES.—For pur-  
23          poses of this subsection—

24                   “(A) IN GENERAL.—The term ‘employer  
25                   payroll taxes’ means the taxes imposed by—

1 “(i) section 3111(b), and

2 “(ii) sections 3211(a) and 3221(a)  
3 (determined at a rate equal to the rate  
4 under section 3111(b)).

5 “(B) SPECIAL RULE.—A rule similar to  
6 the rule of section 24(d)(2)(C) shall apply for  
7 purposes of subparagraph (A).

8 “(g) TERMINATION.—This section shall not apply to  
9 any amount paid or incurred after December 31, 2017.”.

10 (b) TREATMENT AS GENERAL BUSINESS CREDIT.—  
11 Subsection (b) of section 38 of the Internal Revenue Code  
12 of 1986 (relating to general business credit) is amended  
13 by striking “plus” at the end of paragraph (34), by strik-  
14 ing the period at the end of paragraph (35) and inserting  
15 “, plus”, and by adding at the end the following:

16 “(36) the prevention and wellness credit deter-  
17 mined under section 45R.”.

18 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
19 the Internal Revenue Code of 1986 (relating to certain  
20 expenses for which credits are allowable) is amended by  
21 adding at the end the following new subsection:

22 “(g) PREVENTION AND WELLNESS PROGRAM CRED-  
23 IT.—

24 “(1) IN GENERAL.—No deduction shall be al-  
25 lowed for that portion of the costs paid or incurred

1 for a qualified prevention and wellness (within the  
2 meaning of section 45R) allowable as a deduction for  
3 the taxable year which is equal to the amount of the  
4 credit allowable for the taxable year under section  
5 45R.

6 “(2) SIMILAR RULE WHERE TAXPAYER CAP-  
7 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

8 “(A) the amount of the credit determined  
9 for the taxable year under section 45R, exceeds

10 “(B) the amount allowable as a deduction  
11 for such taxable year for a qualified prevention  
12 and wellness,

13 the amount chargeable to capital account for the  
14 taxable year for such expenses shall be reduced by  
15 the amount of such excess.

16 “(3) CONTROLLED GROUPS.—In the case of a  
17 corporation which is a member of a controlled group  
18 of corporations (within the meaning of section  
19 41(f)(5)) or a trade or business which is treated as  
20 being under common control with other trades or  
21 business (within the meaning of section  
22 41(f)(1)(B)), this subsection shall be applied under  
23 rules prescribed by the Secretary similar to the rules  
24 applicable under subparagraphs (A) and (B) of sec-  
25 tion 41(f)(1).”.



1       (d) CLERICAL AMENDMENT.—The table of sections  
2 for subpart D of part IV of subchapter A of chapter 1  
3 of the Internal Revenue Code of 1986 is amended by add-  
4 ing at the end the following:

“Sec. 45R. Prevention and wellness program credit.”.

5       (e) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 2009.

8       (f) OUTREACH.—

9           (1) IN GENERAL.—The Secretary of the Treas-  
10 ury, in conjunction with the Director of the Centers  
11 for Disease Control and members of the business  
12 community, shall institute an outreach program to  
13 inform businesses about the availability of the pre-  
14 vention and wellness credit under section 45R of the  
15 Internal Revenue Code of 1986 as well as to educate  
16 businesses on how to develop programs according to  
17 recognized and promising practices and on how to  
18 measure the success of implemented programs.

19           (2) AUTHORIZATION OF APPROPRIATIONS.—  
20 There are authorized to be appropriated such sums  
21 as are necessary to carry out the outreach program  
22 described in paragraph (1).

1 **SEC. 4. GRANTS TO INCREASE PHYSICAL ACTIVITY AND**  
2 **EMOTIONAL WELLNESS, IMPROVE NUTRI-**  
3 **TION, AND PROMOTE HEALTHY EATING BE-**  
4 **HAVIORS.**

5 Part Q of title III of the Public Health Service Act  
6 (42 U.S.C. 280h et seq.) is amended by striking section  
7 399W and inserting the following:

8 **“SEC. 399W. GRANTS TO INCREASE PHYSICAL ACTIVITY**  
9 **AND EMOTIONAL WELLNESS, IMPROVE NU-**  
10 **TRITION, AND PROMOTE HEALTHY EATING**  
11 **BEHAVIORS AND HEALTHY LIVING.**

12 **“(a) ESTABLISHMENT.—**

13 **“(1) IN GENERAL.—**The Secretary, acting  
14 through the Director of the Centers for Disease  
15 Control and Prevention and in coordination with the  
16 Administrator of the Health Resources and Services  
17 Administration, the Director of the Indian Health  
18 Service, the Secretary of Education, the Secretary of  
19 Agriculture, the Secretary of the Interior, the Direc-  
20 tor of the National Institutes of Health, the Director  
21 of the Office of Women’s Health, and the heads of  
22 other appropriate agencies, shall award competitive  
23 grants to eligible entities to plan and implement pre-  
24 vention and wellness programs that promote health  
25 and wellness and prevent chronic disease. Such  
26 grants may be awarded to target at-risk populations

1 including youth, health disparity populations (as de-  
2 fined in section 485E(d)), and the underserved.

3 “(2) TERM.—The Secretary shall award grants  
4 under this subsection for a period not to exceed 4  
5 years.

6 “(b) AWARD OF GRANTS.—An eligible entity desiring  
7 a grant under this section shall submit an application to  
8 the Secretary at such time, in such manner, and con-  
9 taining such information as the Secretary may require, in-  
10 cluding—

11 “(1) a plan describing a comprehensive pro-  
12 gram of approaches to encourage healthy living,  
13 emotional wellness, healthy eating behaviors, and  
14 healthy levels of physical activity;

15 “(2) the manner in which the eligible entity will  
16 coordinate with appropriate State and local authori-  
17 ties and community-based organizations, including  
18 but not limited to—

19 “(A) State and local educational agencies;

20 “(B) departments of health;

21 “(C) State directors of programs under  
22 section 17 of the Child Nutrition Act of 1966  
23 (42 U.S.C. 1786); and

24 “(D) community-based organizations serv-  
25 ing youth; and

1           “(3) the manner in which the applicant will  
2           evaluate the effectiveness of the program carried out  
3           under this section.

4           “(c) COORDINATION.—In awarding grants under this  
5           section, the Secretary shall ensure that the proposed pro-  
6           grams show a history of addressing these issues, have pro-  
7           gram evaluations that show success, and are coordinated  
8           in substance and format with programs currently funded  
9           through other Federal agencies and operating within the  
10          community.

11          “(d) ELIGIBLE ENTITY.—In this section, the term  
12          ‘eligible entity’ means—

- 13               “(1) a city, county, tribe, territory, or State;
- 14               “(2) a State educational agency;
- 15               “(3) a tribal educational agency;
- 16               “(4) a local educational agency;
- 17               “(5) a federally qualified health center (as de-  
18               fined in section 1861(aa)(4) of the Social Security  
19               Act);
- 20               “(6) a rural health clinic;
- 21               “(7) a health department;
- 22               “(8) an Indian Health Service hospital or clinic;
- 23               “(9) an Indian tribal health facility;
- 24               “(10) an urban Indian facility;
- 25               “(11) any health provider;

1           “(12) an accredited university or college;

2           “(13) a youth serving organization;

3           “(14) a community-based organization; or

4           “(15) any other entity determined appropriate  
5       by the Secretary.

6       “(e) USE OF FUNDS.—An eligible entity that receives  
7 a grant under this section shall use the funds made avail-  
8 able through the grant to plan and implement prevention  
9 and wellness programs that promote health and wellness  
10 and prevent chronic disease.

11       “(f) MATCHING FUNDS.—In awarding grants under  
12 subsection (a), the Secretary may give priority to eligible  
13 entities who provide matching contributions. Such non-  
14 Federal contributions may be cash or in-kind, fairly evalu-  
15 ated, including plant, equipment, training, curriculum, or  
16 a preexisting evaluation framework.

17       “(g) TECHNICAL ASSISTANCE.—The Secretary may  
18 set aside an amount not to exceed 10 percent of the total  
19 amount appropriated for a fiscal year under subsection (j)  
20 to permit the Director of the Centers for Disease Control  
21 and Prevention to provide grantees with technical support  
22 in the development, implementation, and evaluation of pre-  
23 vention and wellness programs under this section and to  
24 disseminate information about effective strategies and

1 interventions in promoting health and wellness and pre-  
2 venting chronic disease.

3 “(h) LIMITATION ON ADMINISTRATIVE COSTS.—An  
4 eligible entity awarded a grant under this section may not  
5 use more than 10 percent of funds awarded under such  
6 grant for administrative expenses.

7 “(i) REPORT.—Not later than 6 years after the date  
8 of enactment of this section the Director of the Centers  
9 for Disease Control and Prevention shall review the results  
10 of the grants awarded under this section and other related  
11 research and identify prevention and wellness programs  
12 that have demonstrated effectiveness in promoting health  
13 and wellness and preventing chronic disease. Such review  
14 shall include an identification of model curricula, best  
15 practices, and lessons learned, as well as recommendations  
16 for next steps to promote health and wellness and prevent  
17 chronic disease. Information derived from such review, in-  
18 cluding model prevention and wellness program curricula,  
19 shall be disseminated to the public.

20 “(j) DEFINITION.—In this section, the term ‘preven-  
21 tion and wellness program’ means a program that consists  
22 of a combination of activities that are designed to increase  
23 awareness, assess risks, educate, and promote voluntary  
24 behavior change to improve the health of an individual,  
25 modify his or her consumer health behavior, enhance his

1 or her personal well-being and productivity, and prevent  
2 illness and injury.

3 “(k) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to carry out this section,  
5 \$60,000,000 for fiscal year 2010, and such sums as may  
6 be necessary for each of fiscal years 2011 through 2014.”.

7 **SEC. 5. PREVENTION AND WELLNESS PROGRAMS FOR INDIVIDUALS AND FAMILIES.**  
8

9 (a) IN GENERAL.—The Secretary of Health and  
10 Human Services shall encourage States to work with in-  
11 surance companies on ways to promote and incentivize the  
12 participation of individuals and families in prevention and  
13 wellness programs, such as through insurance premium  
14 reductions.

15 (b) DEFINITION.—In this section, the term “preven-  
16 tion and wellness program” means a program that con-  
17 sists of a combination of activities that are designed to  
18 increase awareness, assess risks, educate, and promote  
19 voluntary behavior change to improve the health of an in-  
20 dividual, modify his or her consumer health behavior, en-  
21 hance his or her personal well-being and productivity, and  
22 prevent illness and injury.

1 **SEC. 6. RECOGNIZING FOR WELLNESS PROGRAMS UNDER**  
2 **GROUP HEALTH PLANS.**

3 (a) PUBLIC HEALTH SERVICE ACT.—Section 2702 of  
4 the Public Health Service Act (42 U.S.C. 300gg–1) is  
5 amended—

6 (1) in subsection (b), by adding at the end the  
7 following new paragraph:

8 “(4) TREATMENT OF WELLNESS PROGRAMS.—  
9 Paragraph (1) shall not be construed as permitting  
10 variation of premiums based on adherence to or par-  
11 ticipation in reasonably designed programs of health  
12 promotion and disease prevention, if such programs  
13 exist and a group health plan (or health insurance  
14 coverage offered in connection with such a plan)  
15 may establish premium discounts or rebates for  
16 modifying otherwise applicable copayments or  
17 deductibles in return for adherence to or participa-  
18 tion in such programs.”; and

19 (2) by adding at the end the following new sub-  
20 section:

21 “(g) PROGRAMS OF HEALTH PROMOTION OR DIS-  
22 EASE PREVENTION.—

23 “(1) GENERAL PROVISIONS.—

24 “(A) GENERAL RULE.—For purposes of  
25 this section, a program of health promotion or  
26 disease prevention (referred to in this sub-



1 section as a ‘wellness program’) shall be a pro-  
2 gram that is designed to promote health or pre-  
3 vent disease that meets the applicable require-  
4 ments of this subsection.

5 “(B) NO CONDITIONS BASED ON HEALTH  
6 STATUS FACTOR.—If none of the conditions for  
7 obtaining a premium discount or rebate or  
8 other reward for participation in a wellness pro-  
9 gram is based on an individual satisfying a  
10 standard that is related to a health status fac-  
11 tor, such wellness program shall not violate this  
12 section if participation in the program is made  
13 available to all similarly situated individuals  
14 and the requirements of paragraph (2) are com-  
15 plied with.

16 “(C) CONDITIONS BASED ON HEALTH STA-  
17 TUS FACTOR.—If any of the conditions for ob-  
18 taining a premium discount or rebate or other  
19 reward for participation in a wellness program  
20 is based on an individual satisfying a standard  
21 that is related to a health status factor, such  
22 wellness program shall not violate this section if  
23 the requirements of paragraph (3) are complied  
24 with.

1           “(2) WELLNESS PROGRAMS NOT SUBJECT TO  
2           REQUIREMENTS.—If none of the conditions for ob-  
3           taining a premium discount or rebate or other re-  
4           ward under a wellness program as described in para-  
5           graph (1)(B) are based on an individual satisfying  
6           a standard that is related to a health status factor  
7           (or if such a wellness program does not provide such  
8           a reward), the wellness program shall not violate  
9           this section if participation in the program is made  
10          available to all similarly situated individuals. The  
11          following programs shall not have to comply with the  
12          requirements of paragraph (3) if participation in the  
13          program is made available to all similarly situated  
14          individuals:

15               “(A) A program that reimburses all or  
16               part of the cost for memberships in a fitness  
17               center.

18               “(B) A diagnostic testing program that  
19               provides a reward for participation and does  
20               not base any part of the reward on outcomes.

21               “(C) A program that encourages preven-  
22               tive care related to a health condition through  
23               the waiver of the copayment or deductible re-  
24               quirement under an individual or group health  
25               plan for the costs of certain items or services

1 related to a health condition (such as prenatal  
2 care or well-baby visits).

3 “(D) A program that reimburses individ-  
4 uals for the costs of smoking cessation pro-  
5 grams without regard to whether the individual  
6 quits smoking.

7 “(E) A program that provides a reward to  
8 individuals for attending a periodic health edu-  
9 cation seminar.

10 “(3) WELLNESS PROGRAMS SUBJECT TO RE-  
11 QUIREMENTS.—If any of the conditions for obtaining  
12 a premium discount, rebate, or reward under a  
13 wellness program as described in paragraph (1)(C)  
14 is based on an individual satisfying a standard that  
15 is related to a health status factor, the wellness pro-  
16 gram shall not violate this section if the following re-  
17 quirements are complied with:

18 “(A) The reward for the wellness program,  
19 together with the reward for other wellness pro-  
20 grams with respect to the plan that requires  
21 satisfaction of a standard related to a health  
22 status factor, shall not exceed 30 percent of the  
23 cost of employee-only coverage under the plan.  
24 If, in addition to employees or individuals, any  
25 class of dependents (such as spouses or spouses

1 and dependent children) may participate fully  
2 in the wellness program, such reward shall not  
3 exceed 30 percent of the cost of the coverage in  
4 which an employee or individual and any de-  
5 pendents are enrolled. For purposes of this  
6 paragraph, the cost of coverage shall be deter-  
7 mined based on the total amount of employer  
8 and employee contributions for the benefit  
9 package under which the employee is (or the  
10 employee and any dependents are) receiving  
11 coverage. A reward may be in the form of a dis-  
12 count or rebate of a premium or contribution,  
13 a waiver of all or part of a cost-sharing mecha-  
14 nism (such as deductibles, copayments, or coin-  
15 surance), the absence of a surcharge, or the  
16 value of a benefit that would otherwise not be  
17 provided under the plan. The Secretaries of  
18 Labor, Health and Human Services, and the  
19 Treasury may increase the reward available  
20 under this subparagraph to up to 50 percent of  
21 the cost of coverage if the Secretaries determine  
22 that such an increase is appropriate.

23 “(B) The wellness program shall be rea-  
24 sonably designed to promote health or prevent  
25 disease. A program complies with the preceding

1 sentence if the program has a reasonable  
2 chance of improving the health of, or preventing  
3 disease in, participating individuals and it is  
4 not overly burdensome, is not a subterfuge for  
5 discriminating based on a health status factor,  
6 and is not highly suspect in the method chosen  
7 to promote health or prevent disease. The plan  
8 or issuer shall evaluate the program's reason-  
9 ableness at least once per year.

10 “(C) The plan shall give individuals eligible  
11 for the program the opportunity to qualify for  
12 the reward under the program at least once  
13 each year.

14 “(D) The full reward under the wellness  
15 program shall be made available to all similarly  
16 situated individuals. For such purpose, among  
17 other things:

18 “(i) The reward is not available to all  
19 similarly situated individuals for a period  
20 unless the wellness program allows—

21 “(I) for a reasonable alternative  
22 standard (or waiver of the otherwise  
23 applicable standard) for obtaining the  
24 reward for any individual for whom,  
25 for that period, it is unreasonably dif-

1                    difficult due to a medical condition to  
2                    satisfy the otherwise applicable stand-  
3                    ard; and

4                    “(II) for a reasonable alternative  
5                    standard (or waiver of the otherwise  
6                    applicable standard) for obtaining the  
7                    reward for any individual for whom,  
8                    for that period, it is medically inadvis-  
9                    able to attempt to satisfy the other-  
10                   wise applicable standard.

11                   “(ii) If reasonable under the cir-  
12                   cumstances, the plan or issuer may seek  
13                   verification, such as a statement from an  
14                   individual’s physician, that a health status  
15                   factor makes it unreasonably difficult or  
16                   medically inadvisable for the individual to  
17                   satisfy or attempt to satisfy the otherwise  
18                   applicable standard.

19                   “(E) The plan or issuer involved shall dis-  
20                   close in all plan materials describing the terms  
21                   of the wellness program the availability of a  
22                   reasonable alternative standard (or the possi-  
23                   bility of waiver of the otherwise applicable  
24                   standard) required under subparagraph (D). If  
25                   plan materials disclose that such a program is

1           available, without describing its terms, the dis-  
2           closure under this subparagraph shall not be re-  
3           quired.

4           “(4) EXISTING PROGRAMS.—Nothing in this  
5           section shall prohibit a program of health promotion  
6           or disease prevention that was established prior to  
7           the date of enactment of this subsection and applied  
8           with all applicable regulations, and that is operating  
9           on such date, from continuing to be carried out for  
10          as long as such regulations remain in effect.

11          “(5) REGULATIONS.—Nothing in this section  
12          shall be construed as prohibiting the Secretaries of  
13          Labor, Health and Human Services, or the Treasury  
14          from promulgating regulations in connection with  
15          this section.”.

16          (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
17          OF 1974.—Section 702 of the Employee Retirement In-  
18          come Security Act of 1974 (29 U.S.C. 1182) is amend-  
19          ed—

20                 (1) in subsection (b), by adding at the end the  
21          following new paragraph:

22                 “(4) TREATMENT OF WELLNESS PROGRAMS.—  
23          Paragraph (1) shall not be construed as permitting  
24          variation of premiums based on adherence to or par-  
25          ticipation in reasonably designed programs of health

1        promotion and disease prevention, if such programs  
2        exist and a group health plan (or health insurance  
3        coverage offered in connection with such a plan)  
4        may establish premium discounts or rebates for  
5        modifying otherwise applicable copayments or  
6        deductibles in return for adherence to or participa-  
7        tion in such programs.”; and

8                (2) by adding at the end the following new sub-  
9        section:

10        “(g) PROGRAMS OF HEALTH PROMOTION OR DIS-  
11        EASE PREVENTION.—

12                “(1) GENERAL PROVISIONS.—

13                        “(A) GENERAL RULE.—For purposes of  
14                this section, a program of health promotion or  
15                disease prevention (referred to in this sub-  
16                section as a ‘wellness program’) shall be a pro-  
17                gram that is designed to promote health or pre-  
18                vent disease that meets the applicable require-  
19                ments of this subsection.

20                        “(B) NO CONDITIONS BASED ON HEALTH  
21                STATUS FACTOR.—If none of the conditions for  
22                obtaining a premium discount or rebate or  
23                other reward for participation in a wellness pro-  
24                gram is based on an individual satisfying a  
25                standard that is related to a health status fac-



1           tor, such wellness program shall not violate this  
2           section if participation in the program is made  
3           available to all similarly situated individuals  
4           and the requirements of paragraph (2) are com-  
5           plied with.

6           “(C) CONDITIONS BASED ON HEALTH STA-  
7           TUS FACTOR.—If any of the conditions for ob-  
8           taining a premium discount or rebate or other  
9           reward for participation in a wellness program  
10          is based on an individual satisfying a standard  
11          that is related to a health status factor, such  
12          wellness program shall not violate this section if  
13          the requirements of paragraph (3) are complied  
14          with.

15          “(2) WELLNESS PROGRAMS NOT SUBJECT TO  
16          REQUIREMENTS.—If none of the conditions for ob-  
17          taining a premium discount or rebate or other re-  
18          ward under a wellness program as described in para-  
19          graph (1)(B) are based on an individual satisfying  
20          a standard that is related to a health status factor  
21          (or if such a wellness program does not provide such  
22          a reward), the wellness program shall not violate  
23          this section if participation in the program is made  
24          available to all similarly situated individuals. The  
25          following programs shall not have to comply with the

1 requirements of paragraph (3) if participation in the  
2 program is made available to all similarly situated  
3 individuals:

4 “(A) A program that reimburses all or  
5 part of the cost for memberships in a fitness  
6 center.

7 “(B) A diagnostic testing program that  
8 provides a reward for participation and does  
9 not base any part of the reward on outcomes.

10 “(C) A program that encourages preven-  
11 tive care related to a health condition through  
12 the waiver of the copayment or deductible re-  
13 quirement under an individual or group health  
14 plan for the costs of certain items or services  
15 related to a health condition (such as prenatal  
16 care or well-baby visits).

17 “(D) A program that reimburses individ-  
18 uals for the costs of smoking cessation pro-  
19 grams without regard to whether the individual  
20 quits smoking.

21 “(E) A program that provides a reward to  
22 individuals for attending a periodic health edu-  
23 cation seminar.

24 “(3) WELLNESS PROGRAMS SUBJECT TO RE-  
25 QUIREMENTS.—If any of the conditions for obtaining

1 a premium discount, rebate, or reward under a  
2 wellness program as described in paragraph (1)(C)  
3 is based on an individual satisfying a standard that  
4 is related to a health status factor, the wellness pro-  
5 gram shall not violate this section if the following re-  
6 quirements are complied with:

7 “(A) The reward for the wellness program,  
8 together with the reward for other wellness pro-  
9 grams with respect to the plan that requires  
10 satisfaction of a standard related to a health  
11 status factor, shall not exceed 30 percent of the  
12 cost of employee-only coverage under the plan.  
13 If, in addition to employees or individuals, any  
14 class of dependents (such as spouses or spouses  
15 and dependent children) may participate fully  
16 in the wellness program, such reward shall not  
17 exceed 30 percent of the cost of the coverage in  
18 which an employee or individual and any de-  
19 pendents are enrolled. For purposes of this  
20 paragraph, the cost of coverage shall be deter-  
21 mined based on the total amount of employer  
22 and employee contributions for the benefit  
23 package under which the employee is (or the  
24 employee and any dependents are) receiving  
25 coverage. A reward may be in the form of a dis-

1 count or rebate of a premium or contribution,  
2 a waiver of all or part of a cost-sharing mecha-  
3 nism (such as deductibles, copayments, or coin-  
4 surance), the absence of a surcharge, or the  
5 value of a benefit that would otherwise not be  
6 provided under the plan. The Secretaries of  
7 Labor, Health and Human Services, and the  
8 Treasury may increase the reward available  
9 under this subparagraph to up to 50 percent of  
10 the cost of coverage if the Secretaries determine  
11 that such an increase is appropriate.

12 “(B) The wellness program shall be rea-  
13 sonably designed to promote health or prevent  
14 disease. A program complies with the preceding  
15 sentence if the program has a reasonable  
16 chance of improving the health of, or preventing  
17 disease in, participating individuals and it is  
18 not overly burdensome, is not a subterfuge for  
19 discriminating based on a health status factor,  
20 and is not highly suspect in the method chosen  
21 to promote health or prevent disease. The plan  
22 or issuer shall evaluate the program’s reason-  
23 ableness at least once per year.

24 “(C) The plan shall give individuals eligible  
25 for the program the opportunity to qualify for

1 the reward under the program at least once  
2 each year.

3 “(D) The full reward under the wellness  
4 program shall be made available to all similarly  
5 situated individuals. For such purpose, among  
6 other things:

7 “(i) The reward is not available to all  
8 similarly situated individuals for a period  
9 unless the wellness program allows—

10 “(I) for a reasonable alternative  
11 standard (or waiver of the otherwise  
12 applicable standard) for obtaining the  
13 reward for any individual for whom,  
14 for that period, it is unreasonably dif-  
15 ficult due to a medical condition to  
16 satisfy the otherwise applicable stand-  
17 ard; and

18 “(II) for a reasonable alternative  
19 standard (or waiver of the otherwise  
20 applicable standard) for obtaining the  
21 reward for any individual for whom,  
22 for that period, it is medically inadvis-  
23 able to attempt to satisfy the other-  
24 wise applicable standard.

1                   “(ii) If reasonable under the cir-  
2                   cumstances, the plan or issuer may seek  
3                   verification, such as a statement from an  
4                   individual’s physician, that a health status  
5                   factor makes it unreasonably difficult or  
6                   medically inadvisable for the individual to  
7                   satisfy or attempt to satisfy the otherwise  
8                   applicable standard.

9                   “(E) The plan or issuer involved shall dis-  
10                  close in all plan materials describing the terms  
11                  of the wellness program the availability of a  
12                  reasonable alternative standard (or the possi-  
13                  bility of waiver of the otherwise applicable  
14                  standard) required under subparagraph (D). If  
15                  plan materials disclose that such a program is  
16                  available, without describing its terms, the dis-  
17                  closure under this subparagraph shall not be re-  
18                  quired.

19                  “(4) EXISTING PROGRAMS.—Nothing in this  
20                  section shall prohibit a program of health promotion  
21                  or disease prevention that was established prior to  
22                  the date of enactment of this subsection and applied  
23                  with all applicable regulations, and that is operating  
24                  on such date, from continuing to be carried out for  
25                  as long as such regulations remain in effect.

1           “(5) REGULATIONS.—Nothing in this section  
2       shall be construed as prohibiting the Secretaries of  
3       Labor, Health and Human Services, or the Treasury  
4       from promulgating regulations in connection with  
5       this section.”.

6       (c) EFFECTIVE DATE.—The amendments made by  
7       this section shall apply to plan years occurring on or after  
8       the date of the enactment of this Act.

○